

FROM THE INDIVIDUAL TO THE DIVIDUAL: IN THE SUPERMARKET OF “REPRODUCTIVE ALTERNATIVES”

MARIA MIES

Fachhochschule Köln, Fachbereich Sozialpädagogik, Mainzerstrasse 5,
5000 Cologne-1, West Germany

Synopsis—This article is a critique of papers issued by the Working Group of the project “Reproductive Laws for the 1990’s” at Rutgers University, USA and of two articles by Lori Andrews. My critique, in general, is that the women involved in this project consider the new reproductive technologies as potentially beneficial for women’s reproductive autonomy. The main focus of my argument, however, is directed against Andrews’ position. She argues for a liberalisation of almost all laws which still stand in the way of full-fledged commercialisation of reproduction, including those concerning the human body and its parts and substances. Andrews’ views in favour of “reproductive alternatives” and the “body as property” constitute, in my view, the necessary ideological legitimisation for the new reproduction industry, which in its greed for profit has to do away with the integrity of the individual, the human person. Instead, it favours the logic of the “dividual”: a person’s wholeness reduced to saleable and disposable bits and pieces. To me, this so-called liberal feminism is a perversion of everything the ideology of women’s liberation stands for. In addition, I argue that Andrews’ liberalism, which apparently is directed against the “right to life” movement, is in fact not so far removed from it, since both will lead to more state intervention in reproductive processes.

Synopsis — Dieser Artikel stellt eine Kritik der Position der Juristin Lori B. Andrews und anderer Feministinnen dar, die an dem Projekt “Reproductive Laws for the 1990s” der Rutgers University mitwirken. Meine Kritik richtet sich im allgemeinen dagegen, dass die an diesem Projekt beteiligten Frauen die neuen Reproduktionstechniken als einen Beitrag zur Förderung der “reproduktiven Autonomie” der Frauen ansehen und lediglich fordern, dass sie alien Frauen ohne Zwang zu-gänglich gemacht werden sollen. Besonders Lori B. Andrews argumentiert, dass alle Gesetze, die bisher noch einer Kommerzialisierung und Industrialisierung der Fortpflanzung im Wege stehen, beseitigt werden sollen. Sie plädiert dafür, den menschlichen Körper und seine Teile als verkäufliches Eigentum zu betrachten. Nach dieser Position besteht die “reproduktive Autonomie” einer Frau darin, zwischen den verschiedenen technisch machbaren “Reproduktionsalternativen” zu wählen und Teile des eigenen Körpers verkaufen zu können. M.E. bereitet diese Position den Boden für die ideologische Legitimation der neuen Reproduktionsindustrie, die aus Profitsucht die Integrität der weiblichen Person auflöst, aus dem Individuum ein Dividuum macht, ein Teilbares und Aufgeteiltes. Dieser liberale — genauer libertinäre —Feminismus pervertiert die Ziele, für die Frauenbewegung gekämpft hat. Ausserdem führt er notwendigerweise zu mehr und nicht zu weniger staatlicher Kontrolle und Verrechtlichung der Fortpflanzungsvorgänge. Er ist M.E. damit nicht so weit von der Position der Right-to-Life-Bewegung entfernt, wie es zunächst erscheinen mag.

FROM “HELPING THE INFERTILE WOMAN” TO “REPRODUCTIVE ALTERNATIVES”

Most discussions about “benefits and risks” of the new Reproductive Technologies (nRTs) are based on the either tacit or explicit assumption that these technologies were developed in order to help individual infertile women and men to have a “child from their own flesh and blood.” Yet, as far back as the 1985 congress in Bonn, “Women

against Reproductive and Genetic Engineering,” the participants concluded that the objective of the nRTs was not to help infertile individuals but, rather, to promote a new reproduction industry with the aim of overcoming the “growth” problems of industrial capitalism. As the old growth areas like steel, coal, etc. are stagnating or declining, the female body with its generative power has been discovered as a new “area of investment.”

This conclusion —perhaps speculative in 1985 —has already been confirmed by reality. This became clear to me after I read the papers from the project “Reproductive Laws for the 1990s” (1987) carried out under the directorship of Nadine Taub

Mailing address: Blumenstrasse 9, 5000 Cologne, West Germany

and Carol Smith at Rutgers State University, New Jersey, USA. Lori B. Andrews' contribution: "Feminist Perspectives on Reproductive Technologies" is part of this work. Lori B. Andrews is part of the Working Group for the Rutgers Project. She is also associated with the American Bar Foundation and was the only woman in the Ethics Commission of the American Fertility Society, the professional association of about 10,000 American fertility "specialists" and lay people. In 1986 this committee had proposed a number of legal changes which would do away with most legal barriers which still stand in the way of a fully fledged "free" reproduction industry (The Ethics Committee of the AFS, 1986).

In the following, my arguments are directed mainly at two works by Lori B. Andrews: (a) Her paper "Feminist Perspectives on New Reproductive Technologies" (1987), and (b) *The Hastings Center Report* "My Body, My Property" (1986). I also refer to some of the other papers presented in the Briefing Handbook *Reproductive Laws for the 1990s* of the Rutgers project which was distributed in 1987.

Reading Andrews' papers, but also the Briefing Handbook *Reproductive Laws in the 1990s* I was immediately struck by the new terminology in which the discourse is conducted. The "infertile woman" or "couple" of earlier years, for whom reproductive technology was supposedly invented, is hardly mentioned in these texts. Instead, the new key terms—used particularly frequently by Andrews—are "reproductive alternatives," "reproductive options," "reproductive choice," "reproductive autonomy," and "reproductive rights." Andrews bases this "free choice of reproductive alternatives" on the autonomy and privacy of reproductive decisions protected by the U.S. constitution, which, according to her, constitute the "right to abortion" (1987: 46):

. . . the constitutional underpinnings for reproductive choice regarding abortion and contraception also protect autonomy in the use of artificial insemination, embryo donation, surrogacy and so forth.

Put differently, the arguments by which some American feminists demanded a "right to abortion" are now also used to legitimise "alternative reproductive choices." Andrews not only claims

that there is a "fundamental right" to a child from one's own flesh and blood, now the various technologically produced reproductive options appear as part and parcel of the basic human rights, protected by the American constitution. She quotes Norma Wikler who said that:

the danger to the feminist program, of course, is that once the right to privacy in reproductive decision-making loses its status as a natural or constitutional right, women risk losing choices that they now have. (Andrews, 1987: 46–47)

This means that a new reproductive supermarket has opened up: Take your choice! Anything goes!

The concepts "reproductive choice," "reproductive alternatives" are also used by the other scholars in the Rutgers Project. These "reproductive alternatives" not only comprise the various technologies necessary to produce a child *in vitro* for infertile couples, but they also include the "right" to carry a "normal" pregnancy to term. In other words, natural pregnancy and childbirth are put on an equal footing with a number of other "reproductive alternatives." What unites them is that they are all dependent on medical experts and on reproductive technology. Nancy Gertner—another member of the Rutgers Working Group—defines the concept "reproductive choice" in the following way (1987: 7–8):

Reproductive choice shall be defined as:

1. an individual's choice to exercise her constitutional right to the performance of an abortion to the extent protected by state and federal constitutional law;

2. an individual's choice to exercise his/her constitutional right to be sterilised or to refuse sterilisation to the extent protected by state and federal constitutional law;

3. an individual's choice to carry a pregnancy to term;

4. an individual's choice to obtain and to use any lawful prescription for drugs or other substances designed to avoid pregnancy, whether by preventing implantation of a fertilised ovum or by any other method that operates before, at, or immediately after fertilisation;

5. an individual's choice to become pregnant through *in vitro* fertilisation, artificial insemination, or through any other procedure.

However, Lori B. Andrews does not stop at

these general reproductive options. She extends the concept to include all possible technical and social alternatives. According to her, “reproductive choice” and “reproductive alternatives” comprise not only the use of IVF for infertile couples, but also the possibility for *anyone* to “create” their own children without sexual intercourse. This includes “rearing parents-to-be to contract for a child with no biological tie to them. They could use the combination of an egg donor, a sperm donor, and a surrogate” (Andrews, 1987; Appendix A: 3).

“Free choice of reproductive alternatives” means also, of course, the “right” to enter into various types of contracts with “surrogate mothers,” and conversely, a woman’s “right” to become a so-called “surrogate mother.” Furthermore, the technical methods of avoiding children with genetic “defects” are part of this package of “reproductive alternatives.” In Andrews’ words (1987: Appendix A: 4): “Alternative reproduction” may also be practised “by a person who wants to rear a child, but does not wish to engage in sexual intercourse with a person of the opposite sex.”

Such options would eventually lead to widespread genetic screening. Andrews is against compulsory genetic screening, but advocates both voluntary genetic and medical screening for women who (still?) procreate in the “traditional manner” (Andrews, 1987: 27) and for those who use “alternative reproduction.” This framework makes it possible for a woman whose uterus has been removed, but whose ovaries are intact to still become a “genetic mother” by the help of a “surrogate.” Similarly, Andrews recommends that women who undergo cancer treatment, and who are afraid that this treatment “might prove mutagenic to her eggs should be told about the possibility of freezing eggs or embryos in advance of treatment for subsequent use to create a child” (Andrews, 1987: 4). “Reproductive autonomy,” according to Andrews, not only comprises the options to use techniques like cryoconservation of eggs, sperm or embryos, but also the possibility of selling “body parts” to third parties, as she makes clear in her paper: “My Body, My Property” (1986).

Andrews not only discusses the technological possibilities among those “reproductive alternatives” but also the new social relations

created by reproductive technology. According to her, these technologies open up totally new family structures; hence, they fulfill, what the feminist movement – critical of repressive family structures – particularly of the nuclear type – has been demanding for many years. Thanks to the nRTs a child can now have several mothers and fathers – genetic ones, social ones, carrying mothers and rearing mothers, two mothers and no father, and so forth. Legal problems arising from such multiple parenthood arrangements for which there is no provision in the current family law (e.g., the problem of custody), according to Andrews can be avoided: what is needed are contracts *before* conception that stipulate who will be the genetic mother/ father, who will be the carrying mother, the social parents, etc. (1987: 33). *This means that, by necessity, these new reproductive alternatives will lead to an invasion of these most intimate personal relationships by contract law.*

What surprised me most in this discussion of “reproductive alternatives” was that there is no fundamental critique of the technologies. On the contrary, as I see it, both Andrews and the other members of the Rutgers Working Group consider them to be inventions with great potential to enhance women’s “reproductive autonomy.” Their main concern is that there should be no coercion and that all women, irrespective of class and race, should have equal access to these “reproductive alternatives” (Reproductive Laws for the 1990s, 1987: 11):

The Project’s working group believes that, ultimately one of the most pressing concerns is the trade-off between maximising individual reproductive autonomy and allocating societal resources in an equitable way . . . The group believes that a system of national health care insurance would help to allocate resources more equitably.

THE “SURROGATE-MOTHER” INDUSTRY

The transition from “helping the individual infertile woman or man” to a fully fledged “reproduction industry” can be traced clearly in Andrews’ argumentation that all legal barriers should be removed which still stand in the way of hiring “surrogate mothers,” “carrying mothers” or

selling one's sperm, eggs or embryos. As we know, these legal debates — particularly about “surrogacy” — have already begun to happen. For the first time in history a lawyer, Judge Harvey Sorkow from New Jersey, has in the case of Mary Beth Whitehead in 1987 put contract law over and above a woman's claim to a child borne to her. While the New Jersey Supreme Court overturned Sorkow's ruling, if other states do not follow its lead, the doors could still be open for the commercialisation of reproduction (see also Raymond, 1988). The production of children can now become a new “growth industry.” What was seen two years ago as a mere possibility has already become reality.¹

The Sorkow judgement, however, did not fall from heaven. It has to be seen as a consequence of a discourse on “reproductive alternatives” in which the question of human dignity, particularly of *women's* dignity, is not even asked. In Judge Sorkow's judgement, the so-called “surrogate mother” becomes a mere “factor of conception and for gestation” (Superior Court of New Jersey, 1987: 91). He says:

If it is reproduction that is protected, then the means of reproduction are also to be protected. The value and interest underlying the creation of family are the same by whatever means obtained. This court holds that the protected means extend to the use of surrogates. The contract cannot fall because of the use of a third party. It is reasoned that the donor or surrogate aids the childless couple by contributing a *factor of conception and for gestation*. (my emphasis)

I think that Andrews' arguments for the sanctity of surrogacy contracts are not far away from Judge Sorkow's. She discusses the different scruples which American feminists have forwarded against surrogacy such as equating commercial surrogacy with baby selling and the physical and mental risks for the surrogate mother (Andrews, 1987: 15–20). (However, she does not discuss the real issue that many U.S. feminists have critiqued surrogacy for; that is, the selling of women.) But she counters all these criticisms by stating that a signed contract based on informed consent has to be honoured.

She refutes the argument that payment of surrogate mothers amounts to the sale of children

by quoting judgements of the Kentucky Supreme Court and a court in Nassau County, New York (both 1986) which held that paying a surrogate would not amount to baby selling — which is prohibited by American law (Andrews, 1987: 19–20). One of the reasons given by the two courts was that the decision to relinquish the child after birth was made *prior* to the pregnancy. As long as the surrogate was not coerced and had agreed to the contract with a cool head and fully informed about its consequences, one could not speak of selling children or of exploiting women. The exploitation of women, however, is precisely what worries feminist critics; specifically that poor women could be exploited by richer, white middle class couples, and even, that a new class of “breeder women” might arise, where women out of sheer necessity will be forced to become surrogates, or sell their gametes or eggs (Corea, 1984: 18). According to Andrews, however, a ban on the sale of eggs and embryos — and of surrogacy — would be worse than the dangers mentioned by Corea and others. She sees no harm in the fact that a poor woman becomes a surrogate in order to buy food for her family (1987: 17):

. . . we can imagine circumstances in our own society in which a woman would feel compelled to be a surrogate to put food on her table to pay for health care for a loved one or to buy some of the item or service that we legitimately feel that society has an obligation to provide.

Andrews believes that in all these cases one cannot speak of exploitation. She quotes a potential surrogate who asked: “Why is it exploitation to go through a surrogate pregnancy for someone else if I am paid, but *not* if I am not paid?” (1987: 16). Instead of banning surrogacy altogether, as some feminists demand, Andrews believes that surrogate mothers should be paid more.

In all her arguments Andrews claims to defend feminist principles and demands. This is also the case when she refutes the argument of some feminists that surrogacy is too “risky” (1987: 13). According to her, the risks of a surrogate pregnancy are not higher than those of an “ordinary” pregnancy. Moreover, she feels that people have traditionally been allowed to participate in risky activities (such as fire fighting)

if it is based on their voluntary informed consent (Andrews, 1987: 13). Thus, women should not be denied the possibility of being surrogate mothers.

Her strongest argument, however, is that women have to honour their surrogate contracts because they have to prove that they are capable of making responsible decisions: that they are not “fickle,” but mature citizens. She says (1987: 14):

My personal opinion is that it would be a step backward for women to embrace any policy argument based on a presumed incapacity of women to make decisions. That after all was the rationale for so many legal principles oppressing women for so long, such as the rationale behind the laws not allowing women to hold property.

It does not seem to occur to Andrews that both these legal principles and the rationale behind them — namely that women are incapable of rational decisions — have to be rejected as *sexist and patriarchal*. Instead, she feels that women have struggled hard to live up to these (nonsensical) principles; if we now allow women like Mary Beth Whitehead and others to keep their children, we jeopardise the “gains” the women’s movement has made. This point makes it clear what Andrews means by “women’s emancipation,” namely the “equal participation” of women in an overall patriarchal and capitalist economic and legal system. For this system to continue it is indeed necessary that contracts be honoured, that surrogacy contracts be honoured, and that all legal provisions which still stem from a time — antiquated and past—in which all the processes and relations around procreation were considered to be part of our natural existence, have to be scrapped and put under the rules of contract law, the law of the market. In the land of unlimited capital accumulation, contracts weigh more than the claim of a mother to the child carried and borne by her.

A surrogate mother might get out of her contract as long as she is not yet inseminated, according to Andrews (1987: 39). But after insemination and after the birth of the child she has to relinquish the child to the sperm donor who paid her. Even repayment of the sum received for her child would not annul the contract, because the “biological father could persuasively argue that

money will not compensate for being unable to rear his child whom the surrogate agreed to bear for him” (Andrews, 1987: 39–40).

Following from Andrews, it appears that surrogacy is not motherhood. It is not even a service, because the woman is not paid for the service she does for the contracting father. What she is paid for is the “product,” the child. Surrogacy is thus a new “piece work industry” which functions analogously to the exploitation of women whose labour at home is contracted. The entrepreneur (the man) provides a part of the raw-material (sperm, or a donor egg for which he pays) and advance payment for the “carrier” woman. But the product has to be delivered. The delivery is essential. With respect to this demand, the surrogacy industry faces problems similar to those old home-based industries had to contend with in the beginning. It is to make sure that the producers deliver the products and do not keep them for themselves. This means that they have to be forced into accepting that what they produce is a *commodity*, not something of their own, and that they are doing alienated labour.² Andrews takes great pains to draw women away from “precapitalist” behaviour and makes them accept the law of the market for their reproductive behaviour.

In so doing, she consistently uses the concept of “reproductive autonomy.” As I discussed earlier, this implies not only free access to all new reproductive technologies, but also to all kinds of new social arrangements. But in looking at the discussion about surrogacy we discover the dilemma in this argumentation. The concept of reproductive autonomy implies a total liberalisation of the procreative process. Anything should be feasible, and what is technically and socially feasible should also be legally allowed. The state should keep, as far as possible, out of this sphere — according to Andrews (1987: 4–7). So far so good. Yet, since reproductive behaviour has now been integrated into the market — thanks to the “progress” of the nRTs — procreation has become a matter of selling and buying, of mine and thine. And for this, *contracts* are necessary. In other words reproductive autonomy — upheld so strongly by Andrews — ends at contract law. Let me repeat: Reproductive autonomy ends at contract law! Women who enter such contracts, be it for surrogacy, the selling of embryos and other

“reproductive material” or for entering an IVF-programme can no longer interact with their own bodies and its procreative powers as a sovereign person.³ Concepts like reproductive autonomy, reproductive choice, reproductive alternatives have a positive ring in the ears of feminists. But Andrews and her colleagues have turned these concepts around: they are used now to open up women’s procreative power and bodies for total commercialisation in the hands of profit- and fame-seeking industries and “technodocs.”

MY BODY–MY PROPERTY?

Apart from the problem that women might not show enough respect for surrogacy arrangements and other contracts related to reproductive transactions, there is yet another obstacle to overcome in order to free the way for total commercialisation and industrialisation of reproduction. According to Andrews, this is the fact that women, but also men, do not yet handle their bodies – or parts of their bodies – in a rational way, which, according to me means: appropriate for a capitalist market economy. They do not yet deal with their bodies as marketable, and hence profit-generating, property.

After her arguments in favour of liberalisation of reproductive alternatives it is not surprising to learn that Andrews had already previously written an article in which she argues for establishing property relations to our own bodies. In her article “My Body – My Property” (Andrews, 1986), she claims that not only reproductive parts of our bodies, but all other body organs and substances such as blood, semen, tissue, body cells, etc. should be treated as property of the owner of the body, too. She criticises U.S. legal practice according to which people can *donate* their body parts, but cannot *sell* them. On the other hand, she says, scientists and doctors, who experiment with such body parts and substances –mainly taken for free from patients – are able to make a great sum of money from the product of these experiments. For instance, they patent and license cell lines and sell them. Andrews quotes the case of John Moore, a leukemia patient, whose blood was used by his physicians without his knowledge and consent to “develop the patented and commercially valuable Mo cell line” (Andrews, 1986: 28). As the demand for such body substances and body parts is on the

increase – particularly through the growth of biotechnological research and experimentation – Andrews demands that all remaining legal obstacles should be removed which prevent the sale of body parts and substances. This, however, would imply that first and foremost the human body be defined as *property*. Only by treating the body and body parts as her or his property, the “owner” of this property could legally prevent the misuse of these parts. S/he could also claim a share in the profits made by developing these into marketable commodities. The human body defined as property would also mean that s/he could demand compensation according to the tort law. Andrews quotes a case from a hospital in New York City where an attempt was made to fertilise a woman’s egg with her husband’s sperm. The chairman of the department removed the culture from the incubator and destroyed it. The couple sued him, charging conversion of personal property and infliction of emotional distress. Andrews is critical of the fact that the property claim was rejected whereas the emotional distress claim was accepted by the court. She is afraid that people who entrust their reproductive parts – embryos or gametes – to physicians will have no protection unless their body is declared property (Andrews, 1986: 30):

Advances in reproductive technology now frequently require people to entrust their gametes or embryos to the care of physician, laboratory worker, or health care facility. Yet if body parts are not considered property, there may be little protection for people who entrust their bodily materials to others.

Andrews also discusses the possibilities of selling one’s body parts and substances after one’s death. This would mean that already in their life time people walk around as sold-out cadavers! However, as I see it her main interest is clearly in the free commercialisation of reproductive material, which is needed in large quantities by the rapidly expanding demands of reproductive industry and research communities. In this she adopts the position of the American Fertility Society, which argues that eggs, embryos, egg cells and sperm are the property of the person from whom they are taken (American Fertility Society, 1984: 12). Apparently, the property argument is

advanced also in support of feminists like Gena Corea who has objected that, without the women's knowledge, eggs are 'stolen' by physicians during operations, in order to be used for reproduction experiments (Corea, 1985: 135; quoted by Andrews, 1986: 31).

Andrews is of the opinion that the ethical problems are solved when these women are properly informed and consent to selling or donating their eggs or other reproductive matter without any coercion. She does not criticise the commercialisation of these body parts as such, but only that today this happens without the consent of the owners.

CONSEQUENCES FOR THE 'SELLERS', THE 'BUYERS' AND SOCIETY AT LARGE

After introducing her main argument, Andrews also discusses various consequences which the introduction of the concept 'human-body-as-property' might have on the 'donors' – who, I think should now be called 'sellers': The prospective 'receivers' – or 'buyers' – and society at large. One argument which could be advanced against the definition of the human body as property is the fear that poor people could be forced to sell their kidneys and other body parts. This might even lead to a situation that a poor woman or man could be considered an owner of 'capital' if s/he has two kidneys. One kidney costs about U.S. \$50,000. One could thus argue that this person has no right to claim social welfare. Andrews counters such arguments in a similar manner to the previously discussed case of the 'poor woman' who enters a surrogacy contract. For her, it is not ethically unacceptable if a poor person sells her or his body parts in order to feed their children, get medical treatment for a close friend or buy other necessary things. A ban on the sale of body parts, she says, would not do away with the poverty of this person. Instead, it would penalise her/him (Andrews 1986: 32). Again, the 'poor woman' or man is being used to legitimise the introduction of the human body (or parts thereof) into the capitalist market. Andrews does not see ethical problems arising from the fact that body parts are sold and bought, she only discusses the possible health risks for the 'sellers' and 'buyers.'

And she maintains that only the individual herself/himself can decide whether s/he will accept these risks. Her main concern is that there is no coercion and that people are properly informed. She feels that as long as the 'owners' sell their body parts, and not third parties – for instance relatives might sell the body parts of a deceased, or a hospital might sell those of a patient – there would be no ethical problem (Andrews, 1986: 33). She does not say, however, how she will prevent others from treating my body as property if I myself consider it to be my property!

She also does not see an ethical problem in the fact that by defining the body as property the integrity of a human being is destroyed. Though she claims that the human person or the human body is more than the sum of its parts, she *de facto* treats the body as a reservoir of marketable materials. To justify this vivisection and commercialisation of our various body parts and substances she argues that we have already been 'sold.' We sell our labour power and our brain power. Particularly the latter: the legal doctrine of copyright patents defines it and its products as "intellectual property." According to Andrews the selling of one's cognitive functions and properties is worse than selling only parts of our "material" body. I believe that his idealistic view of the human person demonstrates that Andrews does not accept the feminist challenge to the division of ourselves into "spirit" and "matter." She writes (1986: 35):

I view my uniqueness as a person as more related to my intellectual products than my bodily products. (Definitions of personhood, for example, rarely revolve around the possession of body parts, but rather focus on sentience or other cognitive traits.) Arguably it commercialises me less as a person to sell my bone marrow than to sell my intellectual products. Thus I do not view payment of body parts as commercialising people.

Has Andrews ever understood what the Boston Women's Health Collective meant by saying: OUR BODIES OURSELVES?

She also refutes the argument that only well-to-do people could buy body parts and that the poor would be those who sell them. This would really be the most blatant form of commercial

exploitation. She says that already today Third World people “give” their body substances (e.g., blood plasma) to the rich in the industrialised countries (Andrews 1986: 35):

Even today, American drug companies undertake plasma collections in Third World countries throughout Latin America and Asia to meet the needs for plasma products here. People in poor countries are giving of their bodies to people in rich countries. Perhaps we should struggle to assure non-commercialisation of human body products in all countries. But if this reduced the blood supply, doctors might have to turn down some patients who needed surgery. Would proponents of total market bans support that outcome?

Clearly, Andrews is not interested in a total market ban. On the contrary, her efforts are directed at opening up new areas for investment and commercialisation and *not* at reducing these areas. In order to reach this aim, however, the human body, particularly its reproductive capacities and organs, have to be made “freely” accessible to scientific and commercial interests. I believe that Andrews’ analysis plays into the hands of these interest groups. Therefore, her remark about the “poor *giving* of their bodies to the rich” (my emphasis) conceals the violence by which the poor are forced to “give” to the rich.⁴

FROM LIBERALISATION TO STATE CONTROL

In both her papers Andrews argues for a total liberalisation of laws which today still prevent the full commercialisation of reproductive processes and body parts. Nevertheless, she is aware that this total liberalisation and the breaking down of legal barriers will lead to malpractice and abuse of the new “rights.” For instance, she acknowledges the danger that genetic diseases or infectious diseases could be spread by the unrestricted commercialisation of body parts.

While Andrews rejects screening for social and psychological fitness of potential users of reproductive technologies she is in a dilemma when it comes to screening sperm donors or surrogates for medical or genetic reasons. She

regrets the lax handling of professional guidelines regarding sperm donors and surrogates and quotes studies which show that only 29% of infertility specialists offering artificial insemination performed biochemical testing on the donors. But she also refers to several cases of state legislation which make the medical and/or genetic screening mandatory. It is clear that with the extension of the market of more and more “factors of conception and gestation” and of other body parts the recipients’ fears of genetic and infectious diseases will grow. Here the state has to step in to protect the potential buyers.

From the text it is not clear to me what Andrews’ position is regarding state legislation on medical and genetic screening. She only rather vaguely refers to “many feminists” who are in favour of medical screening of donors and surrogates (Andrews, 1987: 27):

Many feminists would advocate infectious disease screening of donors, for example, for AIDS, but have qualms about genetic disease screening since it seems to be a step toward an unpalatable eugenics.

In spite of all the talk about “autonomy” and “individual choice,” when it comes to protecting the interests of individuals they have to call in the state and ask for its control. On the one hand, all legal barriers that prevent the commercialisation of reproduction or body parts should be scrapped, but on the other hand, new legal controls have to be introduced to make sure that these new “reproductive” and other alternatives are not misused. This means that the more the technological “alternatives” advance and the more the existing moral and legal barriers are broken down which prevent the full commercialisation of the human body and its reproductive capacities, the more state control is required. From this follows that more laws have to be made, and *more* bureaucracy and police are needed to implement and enforce these laws. And, of course, more lawyers will be needed to sort out the conflicting interests of the various “property owners.” This process of steady increase of state control is accelerated by the AIDS panic as well as by the fear of hospitals and medical staff of being sued for damages. For this increase in state control over reproductive processes it is irrelevant whether

people live in a formal democracy or in states which are called "totalitarian." It also does not matter whether they have a socialised health care system like Great Britain and, partly at least, the Federal Republic of Germany, or a private system like the USA. This increase in legal and state control over reproduction processes, particularly over women's bodies, is the logical and necessary consequence of the basic methodological principles of reproductive and genetic engineering. I want to formulate the following thesis: *The technological feasibility to dissect reproductive and genetic processes and the human body, particularly the female body, which constitutes the holistic base of these processes, into "reproductive factors," "reproductive components," "reproductive and genetic material" and the possibility to recombine these "components" etc. to new "reproductive alternatives" is welcomed by some as an opportunity to enhance individual "choice" and "autonomy." This increase of individual choice, however, will automatically lead to more state and legal control in the sphere of reproduction.*

The basic methodological principles of reproductive and genetic engineering are the same as in other "hard" sciences. The dissection of organic or inorganic wholes into ever smaller particles and their recombination to new "machines" (Merchant, 1983), is based on the eugenic principle of selection and elimination. Desired particles are selected, undesired ones are eliminated. If these principles were not there, the whole dissection process and the recombination would not make sense. In the sphere of reproduction this dissection, this principle of "divide-and-rule," begins by splitting up the pregnant woman into "the mother" and the "embryo." Within a system based on patriarchy and private interests this splitting up then automatically leads to a conflict of interests, an antagonism between mother and embryo. The foetus or embryo is now conceived as something which is separated from its mother, and in modern reproductive technology it is increasingly also *de facto* separated from the female body. In fact, more and more reproduction engineers are beginning to call the female uterus a "dangerous environment" for the foetus (quoted among others in Henifin, 1987: 15). In order to regulate this new antagonism between mother and foetus – an artificial

antagonism invented by modern science and its makers – some (e.g., the right-to-life people) want to declare the foetus as a human person in the full legal sense of the term. They want to see it as a person whose "foetal rights" have to be protected against its mother. For this they need "Embryo-Protection-Laws" as well as a state and legal machinery which enforce these laws.⁵

But there is not only the new antagonism between mother and foetus. The more reproductive technologies advance, the more embryo research is carried out in the laboratories, the more procedures of prenatal diagnosis are developed, the more the foetus will not only be defined as a person, but also as a patient. In the concept "foetus as patient" the eugenic principles mentioned above are fully realised. A "defective" foetus has either to be eliminated or manipulated by gene therapy. In these processes and manipulations the antagonism between mother and embryo will be followed by antagonisms between doctor and child, and between doctor and mother/parents. There are already several cases in the USA where children born with a so-called genetic defect have sued the doctors and clinics for damage, because the defective foetus was not discovered and aborted in time. Mary Sue Henifin reports the case of the son of Rosemary Procanik who was born with birth defects. The doctors and the hospital were sued because they did not inform his mother in time about the dangers of measles during the three first months of pregnancy in time for her to have an abortion (Henifin, 1987: 2). Sue Henifin is afraid that such "wrongful life cases" and claims for damage will not only be directed against doctors and clinics, but also against the women who, during their pregnancy, may have refused to undergo certain prenatal tests, may have taken drugs or have worked at dangerous jobs. That such fears are not without foundation is clearly expressed in the arguments of tort law specialist Margery Shaw (quoted in Henifin 1987: 15) who says that once a woman decides to carry the foetus to term she

incurs a "conditional prospective liability" for negligent acts towards her foetus if it should be born alive. These acts could be considered negligent foetal abuse resulting in an injured child. A decision to carry a genetically defective foetus to term would be an example.

Abuse of alcohol or drugs during pregnancy . . . withholding of necessary prenatal care, improper nutrition, exposure to mutagens and teratogens or even exposure to the mother's defective intrauterine environment caused by her genotype . . . could all result in an injured infant who might claim that his right to be born physically and mentally sound had been invaded.

In other words, courts and legislatures should take action to make sure that fetuses will not be injured by others, particularly by their mothers. That these arguments are not just part of an academic discourse among lawyers is shown in the case of a woman in California who had given birth to a brain-dead child. She was jailed because she had ignored recommendations of the doctor during pregnancy. However, since no adequate laws for such a case existed, the accusation was withdrawn. To fill the gap a legislator immediately introduced a bill to deal with cases of "maternal neglect" or "wilful disregard" of doctors' orders (Gallagher, 1987: 1).

It is obvious that the enforcement and the extension of "foetal rights" – be it of the "foetus as person" or the "foetus as patient" – can take place only at the expense of the women's individual rights. This will lead, as Janet Gallagher points out (1987: 2–3), to a system of

surveillance and coercion oppressive to all women of childbearing age. What are the options? Administration of pregnancy tests every month to all of us who aren't certifiably infertile and the issuance of cards that permit jogging, drinking or working? If hospitals become jails and doctors cops, the neediest pregnant women – the very poor, the very young, substance abusers — will be driven away from the prenatal care they need so badly.

But not only those who want to expand the legal status of the foetus to full personhood – and hence consider the mother as the enemy of the foetus – disrupt the life-preserving relationship between woman and embryo/foetus, but also those who consider the foetus as a "thing," a piece of property that belongs to the woman. As I have stated earlier in this article, this group too, needs the state and its legal machinery to protect this

"property" from neglect and misuse and damage. With the expansion of the possibilities to dissect the reproductive processes and "matter" into ever smaller parts, the possibility to harm and violate these parts, separated from the woman, increases. The chance of damaging deep-frozen embryos, which are, according to Andrews the property of the mother, is undoubtedly much greater than the possibility to harm an embryo inside the maternal womb! To protect the owner of such "property" against damage, new laws have to be formulated, detailed contracts have to be drafted by which both the owners as well as the reproductive engineers try to protect their conflicting interests. And the state has to guarantee that these laws will be enforced and these contracts honoured.

Particularly, specialists in reproductive medicine and hospitals will increasingly insist on contracts – based on "informed consent" – to protect themselves against claims for damages. The antagonism between doctor and patient is increasing. The state itself has a vital interest, too, in gaining more control over the whole sphere of reproduction. The nRTs do not only, as some of the feminists from the Rutgers Project seem to think, widen the "reproductive choice" of the individual woman, but also the possibility for state intervention, particularly where there exists already a national health system. The state has an interest to have a sound population and to keep health expenditures low. AIDS and the fear of genetic diseases will doubtlessly lead to more state control. Eventually, the state will also have to decide what to do with surplus embryos and other "reproductive material."

I think it is an illusion to believe, as some of the women in the Rutgers Project do, that we could accept the nRTs as a means to widen the "reproductive choice" of women and at the same time to keep the state out of this sphere of "private decisions." Those who allow "technodocs" to dissect living processes and organisms into bits and pieces, have to accept the necessary antagonism arising from conflicts of interests between those divided parts. Notwithstanding their liberal rhetoric they will have to call in the state to regulate the conflicts over the so-called "rights" of the respective parties. The atomised individuals demand that the state should respect the privacy and autonomy of the individual. At the same time they demand absolute safety for their

own private decisions. More liberalism, therefore, will necessarily lead to more state control.

At this level of analysis, in my opinion, there are striking similarities between the liberal position articulated by Andrews and that of the Right-to-Life movement. Andrews, like many feminists, is strongly opposed to this movement because of its efforts to roll back the liberal legislation on abortion. In reality, however, the two positions are closer to each other than might appear if one only listens to the polemics of either side. Andrews is eager to establish that the human body, particularly its reproductive parts, are *property*, a thing. “Reproductive autonomy” according to this concept then means that the woman as proprietor has the right to sell, hire out, etc. this property in instalments. A pregnant woman hence, is the owner of the foetus, the foetus is a *thing*. The symbiosis between a pregnant woman – and the living relationship by which the life of both is preserved – is disrupted, symbolically and also, due to the nRTs, in reality.

The Right-to-Life movement, on the other hand, wants to declare the foetus a full-fledged person in the legal sense, a person who has to be protected by law against the arbitrary interventions of the pregnant woman. In this case, too, the symbiotic relationship between the woman and the foetus is disrupted, at least symbolically. The woman is seen as the enemy of the child. In both cases, however, an antagonism in the woman’s body between herself and her embryo is constructed. And in both cases, to solve this conflict, the state has to be called in; in other words, a further intrusion of the state into women’s generative capacities becomes a necessity. Andrews needs the state to protect the woman’s bodily *property*, the Right-to-Life movement needs the state to protect the *personhood* of the foetus.

As the person, however, as became clear in Andrews’ arguments, is nothing more than an assembly of bodily parts and organs, governed by a brain, the difference between the human being as a *thing* and as a *person* disappears. The person, which the Right-to-Life movement wants to protect, is in the last analysis only a proprietor and seller of her or his own parts. It is this new type of economic and scientific cannibalism, based on the bourgeois property concept and the “progress” of reproductive technology to which both positions, the liberal one and the conservative one, converge.

As I see it, beneath the loud polemics of both camps there is the common base of a system, which since its beginning, has only one aim, namely to turn all things and living beings into commodities for the sake of capital accumulation.

FROM THE INDIVIDUAL TO THE DIVIDUAL

In conclusion, I want to ask a question which kept intriguing me while reading the papers of the Rutgers Project, specifically those by Lori B. Andrews. Andrews makes a strong case for the human body and its parts and substances to be declared as property. In so doing, she grounds herself firmly within the foundations of bourgeois liberties and rights, namely within the institution of private property. These rights and liberties were meant only for those who were owners of property. People without property were not free or equal.

According to Andrews, as women are not yet owners of their own bodies, they cannot be free, equal and autonomous. Following from this logic it seems consistent to demand next that women *should* become the owners of their bodies so that they *can* buy and sell their body parts. But this freedom to sell and to buy depends on the dissection of their own bodies. Which again means that a “whole” woman – an undissected one – cannot be free or autonomous. Here the question arises: who then is the person who sells and buys? If the *individual* – *the* undivided person – has been divided up into her/his saleable parts, the individual has disappeared. There is only the *dividual* which can be further divided up. But then we have to ask: how far can these divisions go? In how many parts can we be dissected and sold and continue to function as “owner” and “seller?” What is the essential part – the residual “subject” which decides about the dissection and sale of other parts? Is it the brain? After all, without a designated subject, all talk of autonomy and self determination remains empty. Even for the signing and honouring of contracts a subject is necessary. But this subject, this person, has been eliminated in theory *and* in practice. What is left is an assembly of parts. *The bourgeois individual has eliminated itself.* Hence, we can understand why there is no longer a place for ethical questions, neither within the individual body nor within the societal body. There are only unrelated parts which, moreover,

fight against each other, as in Hobbes' Leviathan.⁶ No wonder that these atomised, antagonistic parts need a state which holds everything mechanistically together. But even this state is no longer a subject, in the true sense. What rules is the market mechanism of supply and demand. This mechanism determines the value of a human being: U.S. \$50,000 for a kidney, U.S. \$10,000 for a rented womb. Women as whole beings cease to exist.

ENDNOTES

1. The lower New Jersey Court decision of Judge Harvey Sorkow was overturned by the New Jersey Supreme Court in February 1988. For a fuller discussion of this decision see *Reproductive and Genetic Engineering At Issue* 1(2): 175–181. (Also see Rita Arditti *Rage* 1(1): 51–64 and Janice Raymond 1(1): 65–75).

2. The women in a tribal area in India, for instance, did not realise that the pottery they had made in the context of a development project aimed at establishing a piece-work industry, was to be sold in the marketplace. They wanted to keep the pots for themselves and did not understand that they had produced saleable commodities.

3. This is what Renate Klein describes in her paper "When Choice Amounts to Coercion" (Klein, 1987). Concepts such as "choice," "coercion" or "informed consent" make little sense in a world in which women have been socialised into a patriarchal reality which presents them with "options" which are damaging to a woman's dignity and her mental and physical health.

4. While writing this paper I came across a news item in a German newspaper which reported that 60 women and children from Bangladesh were kidnapped and brought across the Indian border. When the police interrogated the women it was found out that they were to be forced into prostitution. The children were to be killed and their kidneys were to be removed and sold. I wonder if Lori B. Andrews would argue in a similar way in this case as she does with regard to plasma collected from the "Third World?" How will she prevent that poor Third World children are being killed to save the life of some of the Western rich if the body and its parts are increasingly becoming marketable commodities? (*Frankfurter Allgemeine Zeitung*, 27.2.1988).

5. Such an "Embryo-Protection-Law" is at present discussed in the Federal Republic of Germany.

6. As Thomas Hobbes saw "Man" as driven basically by egotistic motives, he needed a strong state to regulate the antagonistic interests of the atomised individuals in the "social body." Now not only the social body, the society, is made up of such selfish particles, but also the individual human body is thus dissected (see Hobbes, 1965).

REFERENCES

American Fertility Society. 1984. Ethical Statement on In Vitro Fertilization. In *Fertility and Sterility* 41:

- 12.
- Andrews, Lori B. 1986. My Body, My Property. In *Hastings Center Report*, pp. 28–37.
- Andrews, Lori B.; N.D. distributed in 1987. Feminist Perspectives on New Reproductive Technologies. In *Briefing Handbook: Reproductive Laws for the 1990s*. Women's Rights Litigation Clinic, and Institute for Research on Women, Rutgers Law School, Newark, NJ.
- Corea, Gena. 1984. Wie durch die neuen Reproduktionstechnologien das Bordell-Modell auf die menschliche Reproduktion angewandt werden kann. *Beitrag zur feministischen Theorie und Praxis*, 7(12): 18–27.
- Corea, Gena. 1985. *The Mother Machine*. Harper and Row, New York.
- The Ethics Committee of the American Fertility Society. 1986. *Ethical Considerations of the nRTs*. Suppl. 1, Sept. 1986. 46(3). Published by the AFS Birmingham, AL.
- Frauen gegen Gentechnik und Reproduktionstechnik, Dokumentation zum Kongress*, 19.-21.4.1985, Bonn, W-Germany.
- Gallagher, Janet, J.D.; N.D. distributed in 1987. Foetus as patient. Paper presented at A Forum on Reproductive Laws for the 1990s. In *Briefing Handbook: Reproductive Laws for the 1990s*. Women's Rights Litigation Clinic and Institute for Research on Women, Rutgers Law School, Newark, NJ.
- Gertner, Nancy; N.D. distributed in 1987. *Interference with Reproductive Rights*. In *Briefing Handbook: Reproductive Laws for the 1990s*. Women's Rights Litigation Clinic and Institute for Research on Women, Rutgers Law School, Newark, NJ.
- Henifin, Mary Sue. 1987. What's Wrong With 'Wrongful Life' Court Cases? In *Gene Watch, A Bulletin of 'he Committee for Responsible Genetics*. 4(1): 1–2, 11–15.
- Hobbes, Thomas. 1965. *Leviathan oder Wesen, Form und Gewalt des kirchlichen und bürgerlichen Staates*. Rowohlt, Reinbek b. Hamburg.
- Klein, Renate. 1987. Where choice amounts to coercion: The experiences of women in IVF programmes. Paper presented at 3rd International Interdisciplinary Congress on Women, Dublin, July 5–11 1987.
- Merchant, Carolyn. 1983. *The Death of Nature: Women, Ecology and the Scientific Revolution*. Harper & Row, San Francisco.
- Mies, Maria. 1987. Sexist and Racist Implications of New Reproductive Technologies. In *Alternatives XII*: 323–342.
- Raymond, Janice. 1988. The Spermatic Market: Surrogate Stock and Liquid Assets. In *RAGE*, No. 1, 1988, 65–75.
- Reproductive Laws for the 1990s. A Briefing Handbook*, edited by the Working Group of the Project:

Reproductive Laws for the 1990s, N.D. distributed in 1987. Women's Rights Litigation Clinic, Rutgers Law School, Newark, NJ. Superior Court of New Jersey 1987. In the Matter of Baby 'M'. *Opinion*. March 31: 1-121.

Surrogate Parenting Associates, Inc. v. Kentucky, 704 S.W.2d 209 (Ky. 1986); *Matter of Baby Girl* (Nassau County Surrogate's Court), reported in *New York Law Journal*, August 8, 1986.